

HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A. No.1961 of 2010

JUDGMENT:

The Petitioners in O.P. No. 386 of 2009 on the file of Chairman, Motor Accidents Claims Tribunal cum Principal District Judge Srikakulam (for short 'the court below'), have come before this Court, seeking its indulgence urging that reasonable compensation has not been estimated by the Court below, taking into consideration of the salary certificate produced for establishing the income earned by deceased through his salary.

2. The appellants herein are the petitioners, in O.P. No. 386 of 2009. Respondent Nos.1 & 2 are the owner and insurer of the Eicher Van bearing Regd.No.AP-30Y-4383.

3. For the sake of convenience, the parties are hereinafter will be referred as they are arrayed before the Court below in the Original Petition.

4. The facts to the extent necessary for disposing of the appeal are briefly stated as below:

Petitioners are the wife, minor son and parents of the deceased late Nagabhushana Rao. Their contention is that on 07.06.2009, at about 7.30 P.M., the deceased-Tammineni Nagabhushanam, left his house on a cycle to attend to his duties in M/s.Lanco Infratech Limited, Srikakulam. While he was proceeding on his cycle slowly, by observing the traffic rules, when he reached near Door Darshan Relay Centre, he was hit by EICHER van bearing No. AP 30 Y 4383, which came in his

opposite direction, in a rash and negligent manner and dashed him and as the result of it, he received a fatal injury to his head. Immediately, after the accident, he was taken to RIMS General Hospital, Srikakulam from where he was referred to King George Hospital, Visakhapatnam for better treatment. While he was being brought to King George Hospital at Visakhapatnam for treatment, he died on the way. Traffic Police at Srikakulam registered a case in Crime No. 56 of 2009 under Section 304(A) IPC against the driver of the crime van and filed a charge sheet against him vide CC No.581 of 2009 before the Additional Judicial Magistrate of First Class, Srikakulam upon investigation of the case thoroughly. The petitioners, being the class-1 heirs and the dependents of the deceased laid the claim for compensation of Rs.9,00,000/- as against the owner and Insurer of the Eicher Van which caused accident to him.

The owner of the Eicher Van did not choose to contest the case. The case was contested by the 2nd respondent – Insurance Company. The Insurance Company in its counter, denied all the material allegations made against it. The 2nd respondent – Insurance company took the plea of defence that the driver of the crime vehicle had no valid driving licence to drive the vehicle and that the terms and conditions of the policy were breached by the 1st respondent by handing over his vehicle to a person who had no valid and subsisting driving licence at the material point of time.

5. The court below, framed the following issues based on the above mentioned pleadings:

1. Whether the deceased Tammineni Nagabhushanarao son of Polinaidu died on account of the injuries sustained by him in the motor vehicle accident that took place on 17.06.2009 at about 7.30

P.M. near Doordarshan Relay Centre, besides the compound wall of RIMS General Hospital, Srikakulam/? If so, whether the accident had occurred due to the rash and negligent driving of the Eicher Van bearing No. AP 30 Y 4383 by its driver ?

2. Whether the petitioners are entitled to claim any compensation for the death of Tammineni Nagabhushanarao son of Polinaidu? If so, to what amount and from whom?

3. To what relief ?

6. During the course of enquiry, the wife of the deceased was examined as PW.1 and Exs.A-1 to A-5 were marked. Exs. A1 to A5 were the certified copies of the FIR in Crime No.56 of 2009, charge sheet in C.C.No. 581 of 2009, MVI report, Post Mortem report and salary certificate of the deceased respectively.

7. The learned Trial Judge, on appreciation of the evidence of PW.1 and the contents of the Ex.A1 to A4, where from it was clear that the deceased sustained head injury when his bicycle was hit by the Eicher Van belonging to 1st respondent, and that he succumbed to such injury while he was being taken to King George Hospital at Visakhapatnam, accordingly held that due to negligent driving of the van belonging to 1st respondent, the deceased sustained fatal head injury and died due to such injury and thus answered point No. 1, in favour of the petitioners.

8. The appeal is filed by the petitioners themselves questioning the computation of compensation made by the Court below. Their counsel while making his submissions had continued his arguments only as to the issue relating quantification of compensation, but not on other aspects. Therefore, the only question which needs to be answered by the Court is whether the petitioners are adequately compensated in

respect of death of the deceased Nagabhushan in the road accident dated 07.06.2009.

9. It has been urged by the learned counsel appearing for the petitioners that though they have the production of salary certificate of the deceased by M/s. Lanco Infratech Limited, where he was working as security guard, the Court below assessed the income of the deceased at Rs.100/- per day, and assessed the compensation under head of loss of contribution of his income to his family at Rs.4,08,000/-. The compensation so awarded has no rational and it is contrary in the evidence on record. He contends that as the compensation has not been reasonably estimated by the Court below, taking into consideration Ex.A.5, Salary Certificate of the deceased, which has not been disputed by the respondents, they are seeking indulgence of this Court and to pass an appropriate order by granting reasonable compensation upon consideration of Ex.A-5 – Salary Certificate.

10. I have gone through the relevant portion of the order, where a detailed discussion is made by the Court below in respect of the assessment of compensation under the head of loss of dependency. It is evident from the material on record that the petitioners have not chosen to examine any of the employee of M/s. Lanco Infratech Limited, Srikakulam, where the deceased was working as Security Guard. As no one concerning of Ex.A.5 is examined, the Court below, without taking it into consideration, has assessed the income of the deceased at Rs.100/- per day. Though the income of the deceased as Security Guard is not proved by the petitioners, by examining the authorities who issued it, or by examining the co-employee of the deceased has estimated his income reasonably at Rs.100/- per day.

11. The deceased was an able bodied person and he was aged about 25 years by the date of the accident. Even that a labourer would easily earn the income of Rs.100/- per day and per month at Rs.3,000/- and per annum at Rs.36,000/- . As the deceased was aged about 25 years by the date of accident, the appropriate multiplier to be applied was 18 as per the **Sarla Verma & other v.Delhi Transport Corporation and another**¹ but not the multiplier 17. In the same case the Hon'ble Supreme Court took the view that :

“ where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.”

12. In the given case, the deceased had four dependents. Therefore, $\frac{1}{4}$ of his income should have been deducted towards his personal expenditure. Upon deducting of $\frac{1}{4}$ income of the deceased towards his personal expenditure, his annual contribution of income to his family would come to Rs.27,000/- (Rs.36,000 - Rs.9,000 = Rs.27,000/-). If the annual contribution of the income of the deceased amounting to Rs.27,000/- is multiplied by “ 18” the loss of income contribution of the deceased to his family comes to Rs.4,86,000/- (Rs.27,000 x 18 = Rs.4,86,000/-).

13. In addition to the amount awarded towards loss of income contribution of the deceased to his family, they are entitled to get Rs.70,000/- towards compensation under conventional heads such as loss of estate, loss of consortium and funeral expenses as per the judgment rendered by the apex Court in **National Insurance Co.Ltd. v**

¹ [(2009) 6 SCC 121],

Pranay Sethi and others². The petitioners are, thus, entitled to get the compensation of Rs.5,56,000/- as against Rs.4,43,000/-.

14. In the light of my afore held discussions the appeal filed by the claimants in O.P.No.386 of 2009 on the file of Chairman, Motor Accidents Claims Tribunal cum Principal District Judge Srikakulam is allowed partly by enhancing the compensation from Rs.4,43,000 to Rs.5,56,000/-. The enhanced compensation is payable by the 1st and 2nd respondents jointly and severally together with interest @ 7.5% per annum from the date of petition till the date of realization.

Miscellaneous petitions pending, if any, in this Appeal shall stand closed. No costs.

Dated: 27.12-2018
JR



JUSTICE J. UMA DEVI

² 2017 (6) ALD 170

HON'BLE MS JUSTICE J.UMA DEVI



MACMA No.1961 of 2010

27-12-2018

JR